

P2SSB 5126 (S-2069.2/21) - S COMM AMD  
By Committee on Ways & Means

1 On page 2, line 30, after "of" strike "greenhouse gas emissions  
2 and"

3 On page 4, line 24, after "means" insert ", consistent with the  
4 intergovernmental panel on climate change's 2019 report entitled  
5 global warming of 1.5°C,"

6 On page 4, beginning on line 29, after "mineralization" strike  
7 all material through "activities" on line 31

8 On page 5, line 5, after "(14)" insert "'Closed facility" means a  
9 facility that has elected to permanently stop production and will no  
10 longer be an emissions source.

11 (15)"

12 Renumber the remaining subsections consecutively and correct any  
13 internal references accordingly.

14 On page 5, line 5, after "allowance" insert ", price ceiling  
15 unit,"

16 On page 5, beginning on line 16, strike all of subsection (17)

17 Renumber the remaining subsections consecutively and correct any  
18 internal references accordingly.

19 On page 5, line 35, after "(22)" insert "'Curtailed facility"  
20 means a facility that has temporarily suspended production. The  
21 facility maintains its operating permits and retains the option to  
22 resume production if conditions become amenable.

23 (23)"

24 Renumber the remaining subsections consecutively and correct any  
25 internal references accordingly.

1 On page 10, line 6, after "(51)" insert ""Price ceiling unit"  
2 means the units issued at a fixed price by the department for the  
3 purpose of limiting price increases and funding further investments  
4 in greenhouse gas reduction. A price ceiling unit is not a property  
5 right.

6 (52)"

7 Renumber the remaining subsections consecutively and correct any  
8 internal references accordingly.

9 On page 11, line 3, after "reductions in" strike "greenhouse gas  
10 emissions and other"

11 On page 11, line 9, after "concentrations of" strike "greenhouse  
12 gas emissions and"

13 On page 11, line 13, after "reviews of" strike "greenhouse gas  
14 and"

15 On page 11, line 16, after "(c)" insert "(i)"

16 On page 11, beginning on line 17, after "which" strike all  
17 material through "emissions and" on line 18 and insert "sources are  
18 the greatest contributors of"

19 On page 11, after line 19, insert the following:

20 "(ii) Prior to listing any entity as a high priority emitter, the  
21 department must notify that entity and share the data used to rank  
22 that entity as a high priority emitter, and provide a period of not  
23 less than 60 days for the covered entity to submit more recent data  
24 or other information relevant to the designation of that entity as a  
25 high priority emitter."

26 On page 11, line 21, after "determine if" strike "greenhouse  
27 gases and"

28 On page 11, line 24, after "finds that" strike "greenhouse gases  
29 and"

30 On page 11, beginning on line 29, after "identify the" strike  
31 "covered entities and other"

1 On page 11, line 32, after "targets" strike "as expeditiously as  
2 possible"

3 On page 11, line 33, after "methods" strike "and" and insert ".  
4 Actions imposed under this section may not impose requirements on  
5 covered entities or opt-in entities that are disproportionate to  
6 their contribution to air pollution compared to other sources of  
7 criteria pollutants in the overburdened community. The department  
8 may"

9 On page 11, line 36, after "limitations" insert "on criteria  
10 pollutants"

11 On page 11, line 37, after "(ii)" strike "Reduce" and insert "If  
12 a covered entity or opt-in entity is identified as a high priority  
13 emitter of criteria pollutants, and the emissions of greenhouse gases  
14 and the source of criteria pollutants are correlated, reduce"

15 On page 12, line 2, after "of" insert "criteria pollutant"

16 On page 12, line 10, after "evaluating" strike "greenhouse gases  
17 and"

18 On page 17, line 5, after "allowances;" strike "and"

19 On page 17, line 10, after "communities" insert "; and  
20 (k) Creating a price ceiling and associated mechanisms in section  
21 17 of this act"

22 On page 18, beginning on line 26, after "greenhouse gases" strike  
23 "and criteria pollutants in overburdened communities"

24 On page 18, beginning on line 30, after "70A.45.020" strike all  
25 material through "communities" on line 31

26 Beginning on page 18, line 38, after "limits." strike all  
27 material through "areas." on page 19, line 3

28 On page 31, line 4, after "through" strike "2040" and insert  
29 "2045"

30 On page 31, line 8, after "periods." insert "The rule developed  
31 under this subsection (2)(d) may prescribe an amount of allowances  
32 allocated at no cost that must be consigned to auction by consumer-

1 owned and investor-owned electric utilities. However, utilities may  
2 use allowances for compliance equal to their covered emissions in any  
3 calendar year they were not subject to potential penalty under RCW  
4 19.405.090. Under no circumstances may utilities receive any free  
5 allowances after 2045."

6 On page 31, line 20, after "auction." insert "For calendar year  
7 2030, electric utilities may use allowances for compliance equal to  
8 their covered emissions if not subject to potential penalty under RCW  
9 19.405.090."

10 Beginning on page 33, line 34, after "WITHHOLDING." strike all  
11 material through "limits." on page 34, line 19 and insert "(1) To  
12 help ensure that the price of allowances remains sufficient to  
13 incentivize reductions in greenhouse gas emissions, the department  
14 must establish an emissions containment reserve and set an emissions  
15 containment reserve trigger price by rule. The price must be set at a  
16 reasonable amount above the auction floor price and equal to the  
17 level established in jurisdictions with which the department has  
18 entered into a linkage agreement. In the event that a jurisdiction  
19 with which the department has entered into a linkage agreement has no  
20 emissions containment trigger price, the department shall suspend the  
21 trigger price under this subsection. The purpose of withholding  
22 allowances in the emissions containment reserve is to secure  
23 additional emissions reductions.

24 (2) In the event that the emissions containment reserve trigger  
25 price is met during an auction, the department must automatically  
26 withhold allowances as needed. The department must convert and  
27 transfer any allowances that have been withheld from auction into the  
28 emissions containment reserve account.

29 (3) Emissions containment reserve allowances may only be withheld  
30 from an auction if the demand for allowances would result in an  
31 auction clearing price that is less than the emissions containment  
32 reserve trigger price prior to the withholding from the auction of  
33 any emissions containment reserve allowances.

34 (4) Allowances shall also be transferred to the emissions  
35 containment reserve in the following situations:

36 (a) No less than two percent of the total number of allowances  
37 available from the allowance budgets for calendar years 2023 through  
38 2026;

1 (b) When allowances are unsold in auctions under section 11 of  
2 this act;

3 (c) When facilities curtail or close consistent with section  
4 12(7) of this act; or

5 (d) When facilities fall below the emissions threshold. The  
6 amount of allowances withdrawn from the program budget must be  
7 proportionate to the amount of emissions such a facility was  
8 previously using.

9 (5)(a) Allowances must be distributed from the emissions  
10 containment reserve by auction when new covered and opt-in entities  
11 enter the program.

12 (b) Allowances equal to the greenhouse gas emissions resulting  
13 from a new or expanded emissions-intensive, trade-exposed facility  
14 with emissions in excess of 25,000 metric tons per year during the  
15 first applicable compliance period will be provided to the facility  
16 from the reserve created in this section and must be retired by the  
17 facility. In subsequent compliance periods, the facility will be  
18 subject to the regulatory cap and related requirements under this  
19 chapter."

20 On page 34, line 32, after "than" strike "four" and insert "two"

21 On page 34, line 38, after "(3)" insert "(a)"

22 On page 35, after line 3, insert the following:

23 "(b) Allowances must also be distributed from the allowance price  
24 containment reserve by auction when new covered and opt-in entities  
25 enter the program and allowances in the emissions containment reserve  
26 under section 15 of this act are exhausted."

27 On page 35, after line 17, insert the following:

28 "NEW SECTION. **Sec. 17.** PRICE CONTAINMENT. (1) The department  
29 shall establish a price ceiling to provide cost protection for  
30 facilities obligated to comply with this chapter. The ceiling must be  
31 set at a level sufficient to facilitate investments to achieve  
32 further emission reductions beyond those enabled by the price  
33 ceiling, with the intent that investments accelerate the state's  
34 achievement of greenhouse gas limits established under RCW  
35 70A.45.020. The price ceiling must increase annually in proportion to  
36 the price floor.

1 (2) In the event that no allowances remain in the allowance price  
2 containment reserve, the department must issue the number of price  
3 ceiling units for sale sufficient to provide cost protection for  
4 facilities as established under subsection (1) of this section.  
5 Purchases must be limited to entities that do not have sufficient  
6 eligible compliance instruments in their holding and compliance  
7 accounts for the next compliance period and these entities may only  
8 purchase what they need to meet their compliance obligation for the  
9 current compliance period. Price ceiling units may not be sold or  
10 transferred and must be retired for compliance in the current  
11 compliance period.

12 (3) Funds raised in connection with the sale of price ceiling  
13 units must be expended to achieve emissions reductions on at least a  
14 metric ton for metric ton basis that are real, permanent,  
15 quantifiable, verifiable, enforceable by the state, and in addition  
16 to any greenhouse gas emission reduction otherwise required by law or  
17 regulation and any other greenhouse gas emission reduction that  
18 otherwise would occur."

19 Renumber the remaining sections consecutively and correct any  
20 internal references accordingly.

21 On page 40, after line 2, insert the following:

22 "(8)(a) No city, town, county, township, or other subdivision or  
23 municipal corporation of the state may implement a charge or tax  
24 based exclusively upon the quantity of greenhouse gas emissions.

25 (b) No state agency may adopt or enforce a program that regulates  
26 greenhouse gas emissions from a stationary source except as provided  
27 in this chapter."

28 On page 42, beginning on line 27, after "funds," strike all  
29 material through "act," on line 28

30 Beginning on page 51, line 35, strike all of sections 25 through  
31 27 and insert the following:

32 "NEW SECTION. **Sec. 25.** CONSISTENCY WITH REVIEW OF NEW  
33 FACILITIES. (1) The legislature intends to promote a growing and  
34 sustainable economy and to avoid leakage of emissions from  
35 manufacturing to other locations. The legislature further intends to

1 see innovative new businesses locate and grow in Washington that  
2 contribute to Washington's prosperity and environmental objectives.

3 (2) Consistent with the intent of the legislature to avoid the  
4 leakage of emissions to other jurisdictions, in achieving the state's  
5 greenhouse gas limits in RCW 70A.45.020, the state shall pursue the  
6 limits in a manner that recognizes that the siting and placement of  
7 new best in class facilities that provide for the displacement of  
8 more carbon-intensive processes is in the economic and environmental  
9 interests of the state of Washington.

10 (3) For new or expanded facilities that require review under  
11 chapter 43.21C RCW, and which would result in annual greenhouse gas  
12 emissions in excess of 25,000 metric tons per year, the department  
13 must evaluate the net cumulative greenhouse gas emissions of the  
14 facility, including any net displacement of global emissions  
15 resulting from the project. The department may adopt rules to  
16 determine how to evaluate net cumulative emissions reductions.

17 (4) The limits in RCW 70A.45.020 or greenhouse gas emissions that  
18 are addressed under this section may not be the basis for denial of a  
19 permit application or for judicial review of the grant of a permit  
20 for a new or expanded emissions-intensive and trade-exposed facility.

21 (5) Compliance with the requirements of this chapter is the only  
22 mitigation for greenhouse gases that can be required from these  
23 facilities.

24 (6) Inclusion as a covered entity under this chapter constitutes  
25 mitigation of any significant adverse impacts with respect to  
26 greenhouse gases for a facility subject to the requirements of the  
27 state environmental policy act."

28 Renumber the remaining sections consecutively and correct any  
29 internal references accordingly.

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30 On page 1, line 4 of the title, after "date;" strike "providing  
31 an expiration date;"

EFFECT: Removes greenhouse gas (GHG) emissions from the coverage  
of the environmental justice review, so that only criteria pollutant

emissions, concentrations, and reductions are monitored and evaluated in overburdened communities under the review.

Replaces references to "covered entities and other sources" with "sources" when describing potential emitters of criteria pollutants subject to the environmental justice review.

Requires the Department of Ecology (Ecology) to notify an entity before designating it as a high priority emitter and share the data used to rank that entity, and provide a period of not less than 60 days for the entity to submit more recent data or other information relevant.

Removes the requirement that the Department of Ecology (Ecology) achieve air quality reduction targets as expeditiously as possible, as part of the review.

Requires that actions imposed under the environmental justice review may not impose requirements on covered entities or opt-in entities that are disproportionate to their contribution to air pollution compared to other sources of criteria pollutants. If criteria pollutant reductions are not occurring in identified overburdened communities, provides that the department may, rather than must, adopt stricter air quality standards, emission standards, or emissions limitations; reduce offset limits; or revise a linkage agreement.

Provides that offset limits may only be reduced for a covered or opt-in entity under the review if emissions of GHGs and the source of criteria pollutants are correlated.

Removes the evaluation of GHG and criteria pollutant reductions in overburdened communities from the scope of the cap and invest program performance reviews occurring by 2028 and 2035.

Allows the electric utilities to retain an amount of allowances to cover emissions already offset under the Clean Energy Transformation Act.

Directs that the emissions containment reserve trigger price must be equal to the level established in linked jurisdictions. Ecology must suspend the trigger price if a linked jurisdiction has no trigger price.

Requires allowances to be transferred to the emissions containment reserve when allowances are unsold in auctions, when facilities are curtailed or closed, or when facilities fall below 25,000 metric tons.

Requires, rather than allows, allowances to be distributed from the reserve when new entities enter the program. If the reserve is exhausted, allowances must be distributed from the allowance price containment reserve by auction for new entities.

Directs that new emissions-intensive, trade-exposed entrants will be covered using allowances from the emissions containment reserve when they come on line and then subjects them to the requirements of the program in subsequent compliance periods.

Reduces the minimum amount of allowances from 4 to 2 percent of the allowance budgets during the first compliance period to be available in the allowance price containment reserve.

Establishes a price ceiling and price containment reserve to provide cost protection for facilities obligated to comply with the program. The price ceiling shall be set at a level sufficient to facilitate investments to achieve further emission reductions beyond those enabled by the price ceiling.

Requires Ecology to issue price ceiling units for sale if no allowances remain in the allowance price containment reserve. Funds raised in connection with sales of price ceiling units must be expended to achieve emissions reductions.

Directs Ecology to evaluate the net cumulative GHG emissions for a new or expanded facility that require review under the State Environmental Policy Act (SEPA) and would result in annual GHG emissions in excess of 25,000 metric tons per year.

Directs that the statewide GHG emissions limits or GHG emissions from a new or expanded facility must not be the basis for denial of a permit application or for judicial review of a grant of permit and compliance with the cap and invest program is the only mitigation for GHGs that can be required from these facilities.

Removes Sections 25 and 26, which established the comprehensive program to implement the state's climate commitment and climate commitment task force.

Adds that no state agency may adopt or enforce a program that regulates GHG emissions for a stationary source except as provided under this act.

Adds definitions for closed and curtailed facilities and price ceiling units.

Clarifies the definition of carbon dioxide removal to make it consistent with the intergovernmental panel on climate change's 2019 report.

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